No. 78

NO. 9406

MAY 9 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
MARCH TERM, A. D. 1944

American Broach Employees Protective Association, Petitioner

vs.

National Labor Relations Board, Respondent

and

American Broach & Machine Company, Respondent

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support of Petition.

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IN THE SUPREME COURT OF THE UNITED STATES
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American Broach Employees Protective Association, Petitioner and Appellant

vs.

National Labor Relations Board, Respondent and Appellee

American Broach & Machine Company, Respondent and Appellee

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support Thereof.

To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Your Petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED

The Petitioner, American Broach Employees Protective Association, is an independent union composed of employees of the American Broach and Machine Company of Ann Arbor, Michigan. The Petitioner is incorporated under the laws of the state of Michigan and ever since its incorporation in 1937 it has filed its annual

reports and paid its annual franchise fees to the State of Michigan. The Petitioner has held general and executive meetings from time to time. (R-203).

In 1937 the UAWA-CIO was trying to obtain the right to be the sole bargaining agent for the employees of the American Broach and Machine Company. An election was ordered by the National Labor Relations Board and the Petitioner won the election and was duly certified to be the sole bargaining agent by the N.L.R.B.

This certification has never been withdrawn or revoked. (R-208).

On behalf of the UAW-CIO, the National Labor Relations Board issued its complaint May 12, 1942 alleging, among other things, that "in and after March 1942, (the American Broach and Machine Company) dominated and interfered with the formation and administration of the Association and contributed financial and other support to the Association". A hearing was held in Ann Arbor between May 28 and June 12, 1942 at which time Petitioner was granted leave to intervene, limited to the interest of the Association in the issues. (R-46).

On the first day of the hearing Petitioner's members assembled in the hearing room to assist Counsel for the Petitioner in his cross examination of the Board's witnesses. The hearing was thereupon adjourned by the Trial Examiner and after conference between the Trial Examiner and the War Labor Board, telegrams were sent by the War Labor Board to the Petitioner directing that no employee be present at the hearing except when called to testify. (R-273-274).

The Trial Examiner consistently denied Petitioner's Counsel an opportunity to have members of the Association present when the Board's witnesses were testifying against that member of the Association.

The Board entered its order October 31, 1942 by which order the American Broach and Machine Company is commanded to cease recognizing its contract with the Petitioner and further orders the American Broach and Machine Company to post certain notices.

On November 27, 1942 the N.L.R.B. filed its petition for en-

forcement of its order in the United States Circuit Court of Appeals, 6th Circuit. The case was argued and submitted December 13, 1943. On December 17, 1943 a judgment was entered by the United States Circuit Court of Appeals, 6th Circuit, granting the petition of the N.L.R.B. for enforcement of its order. January 15, 1942 a petition for rehearing was filed by the Petitioner which petition was denied on February 11, 1944.

JURISDICTION

Final judgment was entered in this case by the United States Circuit Court of Appeals, Sixth Circuit, on December 17, 1943. Petition for rehearing was denied February 11, 1944.

The Circuit Court of Appeals has in this case decided an important question of federal law which has not been, but should be, settled by this Court. [Supreme Court Rule 38 (5) (b)].

This Court has never decided that the refusal of a Trial Examiner to permit witnesses in the Court Room to enable their Counsel to cross-examine Board's witnesses is such unfair conduct by the Trial Examiner as to amount to denial of due process of law.

THE QUESTION PRESENTED

The question presented in this case is whether due process of law was denied to the Petitioner by reason of the refusal of the Trial Examiner to permit Petitioner's Counsel opportunity to have witnesses present in the Hearing Room at the time the Board's witnesses were testifying against them to assist Petitioner"s Counsel in the cross-examination of the Board's witnesses.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

A substantial federal question presents itself with respect to the scope and power of the Trial Examiner in a hearing before the National Labor Relations Board to deny to Counsel the right to have his clients present at the hearing to hear the charges and statements made against them by the Board's witnesses. (R270-271-273-274-277-279-280).

So far as Petitioner is informed this case presents, for the

first time, the question as to whether the conduct of a Trial Examiner in refusing Counsel opportunity to have his clients present to enable him to cross-examine the Board's witnesses constitutes denial of due process of law as guaranteed by the Constitution of the United States, and which is recognized as standard practice in all State and Federal Courts.

The Circuit Court of Appeals in granting the petition of the National Labor Relations Board for enforcement of its Order has sanctioned the conduct of the Trial Examiner in denying the Petitioner due process of law.

By reason of the Trial Examiner's denial to Petitioner's Counsel of the opportunity to have his clients present in the Hearing Room when testimony was being given by Board's witnesses against such parties, Petitioner was unable to refute or cross-examine the Board's witnesses. If this Court permits the final judgment of the Circuit Court of Appeals to stand in the present case, it will mean that no longer will the accused have the right to be present to hear testimony presented against them and all further hearings of the National Labor Relations Board may be conducted exparte. An analysis of the record in this case clearly shows such material restriction upon the just rights of the Petitioner to be heard and be present to hear the witnesses against them as to amount to a clear denial of due process.

Your Petitioner presents to this Court a file herewith as an exhibit hereto, a duly certified transcript of the entire record in the case, as the same appears in the United States Circuit Court of Appeals for the Sixth Circuit.

WHEREFORE, your Petitioner prays that a Writ of Certiorari issue to the Circuit Court of Appeals for the Sixth Circuit to the end that the errors aforesaid may be corrected by this Court.

JOHN B. MELLOTT

of Counsel for Petitioner